



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 31, 2003

Ms. Jessica Scott  
Scanlan, Buckle & Young, P.C.  
602 West 11<sup>th</sup> Street  
Austin, Texas 78701-2099

OR2003-9409

Dear Ms. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193524.

The City of Sunset Valley (the "city"), which you represent, received a request for any and all close patrol and activity reports of officer Melissa Porterfield and any disciplinary actions taken for false entry of Officer Porterfield's activity reports. You state that the city is releasing some of the responsive information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime... if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; [and]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution... if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or (b)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this case, you inform us that "Ms. Porterfield was indicted for the crime of tampering with governmental record, but no trial or other adjudication has taken place regarding this charge." You also state that "as of this date, no charges have been filed against Ms. Porterfield for criminal mischief." However, it is unclear from your statements whether the criminal matter of tampering with governmental records and criminal mischief allegations to which the submitted information relates have concluded or whether both cases remain ongoing, and have yet to result in a trial or other adjudication. *See* Gov't Code § 552.108(a)(1), (b)(1) (applying only to information that if released would interfere with an ongoing criminal case); Gov't Code § 552.108(a)(2), (b)(2) (applying only to information pertaining to concluded cases that did not result in conviction or deferred adjudication). Therefore, because you have not adequately demonstrated the applicability of subsections 552.108(a)(2) and (b)(2), the submitted information you have marked as subsections 552.108(a)(2) and (b)(2) cannot be withheld from disclosure pursuant to section 552.108.

We note however, that this information contains e-mail addresses of members of the public that are confidential pursuant to section 552.137 of the Government Code. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

- (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
  - 2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
  - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
  - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.
- (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 909, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. Thus, the city must withhold the e-mail addresses we have marked under section 552.137(a), unless it has received consent for release from the individuals whose addresses are at issue.

You claim that some of the information in Document C is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. We are uncertain whether the former police officer to whom this request pertains remains a licensed peace officer. If she remains a licensed peace officer, the city must withhold the information that we have marked pursuant to section 552.117(a)(2) of the Government Code. However, if the former police officer is no longer a licensed peace officer, such marked information relating to her may still be excepted from disclosure under section 552.117(a)(1) of the Government Code. Accordingly, we will address whether section 552.117(a)(1) excepts from disclosure any of this type of information regarding this individual.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1).

However, such information may not be withheld under section 552.117(a)(1) if the employee did not timely request confidentiality for this information in accordance with section 552.024. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that to the extent that the former police officer timely elected confidentiality for the information we have marked prior to the date that the city received this request, the city must withhold the information pursuant to section 552.117(a)(1) of the Government Code.

Finally, we address your arguments regarding section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ) and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, or opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 (1993); *see also* *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5. We have reviewed the information you have highlighted as being excepted under this section and conclude that the information you have marked relates to administrative personnel matters and does not constitute discussions regarding the city or police department’s policymaking. Accordingly, we conclude that this information may not be withheld under section 552.111. Therefore, the information must be released to the requestor.

In summary, the email addresses we have marked must be withheld pursuant to section 552.137 of the Government Code. You must also withhold the information we have marked under section 552.117 if either section 552.117(a)(1) or 552.117(a)(2) applies. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/sdk

Ref: ID# 193524

Enc. Submitted documents

c: Ms. Sally Hernandez  
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(w/o enclosures)